MALAYAN BANKING BHD.

v.

LIM GHEE LENG & ORS.

FEDERAL COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
GEORGE SEAH FJ
SYED AGIL BARAKBAH FJ
[CIVIL APPEAL NO. 118 OF 1984]
30 OCTOBER 1984

BANKING: *Interest payment - Claim for payment under a Trust Receipt - Appeal against Judge's refusal to grant interest to the appellants under the Trust Receipt - Partnership law - Liability when debts incurred before retirement from the partnership.*

The appellants were plaintiffs in an O. 14 proceeding. Briefly, the appellants had sued the four respondents who were partners of a firm under a Trust Receipt which matured on 14 June 1975. The appellants had demanded payment from the respondents. The 1st, 2nd and 4th respondents claimed that they were respectively no longer associated with the firm when the appellants demanded payment. The Senior Assistant Registrar dismissed the appellant's application. On appeal to the Judge, the learned Judge allowed the appeal and gave judgment in the sum of RM27,245.82. He disallowed the claim for interest in the sum of RM21,316.50 because he said the appellants had failed to serve the respondents with a notice of demand. The learned Judge also penalised the appellants with costs for having brought the action almost six years after it arose. The appellants appealed. The respondents cross appealed.

Held:

[1] No one can escape liability by pleading resignation or retirement from a partnership where the debt was incurred by the partnership before the resignation/retirement.

[2] The appellants should be granted their claim of interest. The Trust Receipt matured on 14 June 1975. No notice was required as the writ was itself a notice. Further, although no specific rate of interest was stated in the Trust Receipt, it did state that interest was chargeable as from 7 February 1975. Therefore, the interest chargeable would be the usual rate the particular bank would charge on a Trust Receipt Account.

[3] The appellants brought the action within the limitation period and thus should not be penalised for costs. As they had won the appeal, costs should be given to them.

[Appeal allowed with costs both in this Court and the Court below. Cross appeal dismissed with costs.]

Legislation referred to:
Partnership Act 1961, s. 19(2)

For the appellants - H.Y. Too; M/s. Shook Lin & Bok
For the 1st respondent - C.F. Chin; M/s. Chin & Co.
For the 2nd respondent - J. Siva Segara; M/s. Siva Segara & Co.
For the 4th respondent - C. Lee (L.G. Oliveiro with him); M/s. Saghir Yaacob & Ismail

JUDGMENT

Lee Hun Hoe CJ (Borneo):

The plaintiffs/appellants appealed against the learned Judge's refusal to grant them interest while the defendants/respondents cross-appealed on the ground that there were triable issues and that the learned Judge should not have entered judgment summarily against them. The facts have been set out in full by the learned Judge and we do not have to repeat them here.

Briefly, the plaintiffs sued the four defendants who were partners of a firm called Berjasa Corporation for RM48,562.32 under a Trust Receipt which matured and became payable on 14 June 1975. The plaintiffs alleged that they had issued notice of demand but the defendants failed to pay. Judgment was obtained against the 3rd defendant in default of appearance. The 1st defendant resigned on 26 August 1976. The 4th defendant also resigned on 26 August 1976. The 2nd defendant claimed he was no longer associated with the firm when the plaintiffs demanded payment by letters dated 26 March 1977 and 27 May 1981 as set out in para. 6 of the Statement of Claim.

By a Summons in Chambers dated 20 December 1981 the plaintiffs applied for final judgment. It must be pointed out that the Trust Receipt matured and became payable on 14 June 1975, long before the 1st and 4th defendants resigned and also before the 2nd defendant claimed he was no longer associated with the firm. On 25 November 1982 the Senior Assistant Registrar dismissed the plaintiff's application for summary judgment. The plaintiffs appealed. The learned Judge allowed the appeal. He gave judgment for the plaintiffs in the sum of RM27,245.82. However, he rejected the claim for interest in the sum of RM21,316.50. He also penalised the plaintiffs with costs.

The learned Judge was perfectly right to refer to s. 19(2) of the Partnership Act which states in no uncertain terms that:-

> A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

The defendants incurred the debt on the Trust Receipt before their resignations or retirement. The debt was also due before their resignations or retirement. They cannot escape liability by merely pleading resignation or retirement.

The learned Judge considered that the sum of RM48,562.32 was payable by the defendants to the plaintiffs as evidenced by the Trust Receipt and the Statement of Accounts and payments made by the defendants towards the discharge of their debt.

We are, however, unable to agree with the learned Judge when he said that the plaintiffs had failed to serve the defendants with the notice of demand for which, therefore, the plaintiffs should be denied the right of interest.

The Trust Receipt matured and became due on 14 June 1975. No notice was necessary. The writ itself is a notice. We also consider that the learned Judge exercised his discretion wrongly by penalising the plaintiffs with costs simply on the ground that plaintiffs brought the action almost six years after it arose. The plaintiffs won the appeal and they should be given costs. The fact that they brought the action almost six years after it arose should not be a ground for exercising discretion against them. They brought the action within the period allowed by law. As the learned Judge at p. 118 stated:

The plea of limitation, however, had really no merit because, although the payment by the defendants was due on the 14 June it was only made on the 12 November 1975. But the writ was filed on the 10 June 1981, within the six-year period.

Having found that the plaintiffs filed their claim within the limitation period - a period allowed by law - we cannot see why they should be penalised with costs.

As regards interest, the defendants contended no rate was agreed. At the bottom of the Trust Receipt under Particulars of Drafts, it is clearly stated as follows:

interest chargeable as from 7 February 1975.

The interest chargeable is the usual rate the particular bank would charge on Trust Receipt Account. It would of course have been better if the rate was stated. But, the defendants cannot say that they were not liable to pay interest merely because no rate was specified. The Trust Receipt clearly specified that interest was chargeable from 7 February 1975.

We allowed the appeal with costs here and the Court below. Deposit to be refunded to the appellants. Cross appeal dismissed with costs.

Also found at [1985] 1 CLJ 154